

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DARRYL PATRICK MARTINELLI,

Plaintiff,

v.

No. CV 20-764 CG

KILOLO KIJAKAZI,¹
Commissioner of the
Social Security Administration,

Defendant.

**ORDER GRANTING UNOPPOSED MOTION TO AWARD ATTORNEY FEES
UNDER THE EQUAL ACCESS TO JUSTICE ACT**

THIS MATTER is before the Court on the parties' *Stipulated Motion for Award of Attorney Fees Under the Equal Access to Justice Act* (the "Unopposed Motion"), (Doc. 29), filed September 20, 2021. The Court, having reviewed the Unopposed Motion under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412, finds the Unopposed Motion is well-taken and shall be granted.

IT IS THEREFORE ORDERED that Plaintiff be awarded \$5,400.00 in attorney fees pursuant to EAJA, 28 U.S.C. § 2412, made payable to Plaintiff but mailed to Plaintiff's attorney. *See Astrue v. Ratliff*, 560 U.S. 586 (2010) (EAJA fees are paid to the prevailing party, not the attorney).

IT IS FURTHER ORDERED that if Plaintiff's counsel receives attorney fees under both the EAJA and 42 U.S.C. § 406(b) of the Social Security Act, Plaintiff's counsel shall refund the smaller award to Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

¹ Kilolo Kijakazi was appointed Acting Commissioner of the Social Security Administration on July 9, 2021.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Carmen E. Garza", written over a horizontal line.

THE HONORABLE CARMEN E. GARZA
CHIEF UNITED STATES MAGISTRATE JUDGE